

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CLAUDIA YOUNG,

Plaintiff,

v.

HAL. NEDERLAND N.V., HOLLAND
AMERICA LINE N.V. and CHUKKA
CARIBBEAN ADVENTURES, LTD., S.A.,

Defendants.

No. C05-1523L

ORDER ON MOTION TO DISMISS
PURSUANT TO 12(b)(6)

This matter comes before the Court on the “Motion of Defendants Hal Nederland N.V. and Holland America Line N.V. to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b)(6)” (Dkt. # 7). Defendants Hal. Nederland N.V. and Holland America Line N.V. (together, “the moving defendants”) seek to dismiss this action for failure to state a claim based on plaintiff’s alleged execution of a waiver releasing the defendants from liability. See Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994) (describing the “incorporation by reference” doctrine, which permits consideration of the waiver at this stage of the proceedings). The moving defendants argue that the waiver in question satisfies the elements of a federal common law waiver: informed consent,

1 not inconsistent with public policy, and not an invalid cohesion contract. See, e.g., Murley v.
2 Deep Explorers, Inc., 281 F.Supp.2d 580, 589 (E.D.N.Y. 2003). Notwithstanding the moving
3 defendants' presentation of the alleged waiver, the validity of the waiver according to the
4 elements outlined in Murley requires some fact-intensive inquiry.

5 Motions to dismiss are disfavored. "A complaint should not be dismissed unless it
6 appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would
7 entitle him to relief." Van Buskirk v. CNN, Inc., 284 F.3d 977, 980 (9th Cir. 2002) (citations
8 omitted). The moving defendants have not met this burden at this stage.

9 For the foregoing reasons, IT IS HEREBY ORDERED that the moving defendants'
10 motion to dismiss is DENIED.

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12 DATED this 25th day of January, 2006.

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15 Robert S. Lasnik
16 United States District Judge
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